

1 HEARING ON NOMINATION OF GINEEN BRESSO,
2 THOMAS HICKS, AND MYRNA PEREZ TO BE MEMBERS
3 OF THE ELECTION ASSISTANCE COMMISSION

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5 WEDNESDAY, JUNE 29, 2011

6
7 United States Senate,
8 Committee on Rules and Administration,
9 Washington, D.C.
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12 The committee met, pursuant to notice, at 10:07 a.m., in Room SR-301, Russell
13 Senate Office Building, Hon. Charles E. Schumer, Chairman of the committee, presiding.

14 Present: Senators Schumer, Alexander, Cochran, and Blunt.

15 Staff Present: Jean Bordewich, Staff Director; Jennifer Griffith, Deputy Staff
16 Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam
17 Ambrogi, Administrative and Legislative Counsel; Carole Blessington, Assistant to the
18 Staff Director; Josh Brekenfeld, Professional Staff; Sonia Gill, Counsel; Lauryn Bruck,
19 Professional Staff; Lynden Armstrong, Chief Clerk; Jeff Johnson, Staff Assistant; Mary
20 Suit Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director;
21 Paul Vinovich, Republican Chief Counsel; Michael Merrell, Republican Elections Counsel;
22 and Trish Kent, Republican Professional Staff.

23 **OPENING STATEMENT OF CHAIRMAN SCHUMER**

24 **Chairman Schumer.** The Committee on Rules and Administration will come to
25 order. We are going to try to finish this in record time. So, we are going to ask
26 everybody to be very brief. In fact, I am going to start with myself.

27 I have an opening statement. I am going to put it in the record. The hearing,
28 as you know, is a confirmation hearing of the nomination of three nominees to the
29 Election Assistance Commission. We know how important the EAC is.

30 And so, I am going to put my entire statement in the record. I know that
31 Senator Alexander very much wants to make an opening statement, and so, I am going
32 to defer to him.

33 With unanimous consent, my entire statement is entered into the record.

34 [The prepared statement of Chairman Schumer included in the record:]

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36 **OPENING STATEMENT OF SENATOR ALEXANDER**

37 Senator Alexander. Thanks, Mr. Chairman. I am going to be reasonably
38 succinct --

39 **Chairman Schumer.** You do not have to be succinct.

40 **Senator Alexander.** I need to make my statement.

41 **Chairman Schumer.** I understand. Please.

42 **Senator Alexander.** It is good to see you and good to see Senator Cochran.

43 Mr. Chairman, with all due respect to the nominees before us, I think this

44 hearing is premature. Instead of considering new nominees, we ought to be abolishing
45 this commission.

46 The Election Assistance Commission was constituted in 2003. Since then, our
47 Committee has not had one single oversight hearing on it. My predecessor at this
48 Committee, Senator Bennett, wrote in 2009 to ask for an oversight hearing. We did
49 not have one. I wrote in March to suggest one. We did not have one.

50 Our government is borrowing 40 cents out of every dollar we spend. We have
51 a terrific finance problem with the Federal Government. Yet today, we are considering
52 new appointments to a commission that should cease to exist.

53 Now, here is why I say that. This commission was created by the Help America
54 Vote Act in 2002. The Election Assistance Commission was authorized for three years
55 and given certain tasks. The primary task of the commission was to distribute federal
56 payments to the states to help them upgrade their voting systems. \$3.2 billion was
57 appropriated for these statements, and it has been distributed.

58 Given our current fiscal situation, it is very unlikely any more federal money is
59 forthcoming. The current Administration seems to agree with that. They have asked
60 for no funds for this purpose in either of their last two budgets.

61 The commission was also directed to develop voluntarily voting system
62 guidelines and a testing and certification program for voting machines. The actual
63 work involved in this is performed by the National Institute of Standards and
64 Technology.

65 Finally, the commission was to act as a clearinghouse to collect and distribute
66 information on best practices. Yet the intended beneficiaries of this service do not
67 seem to have much use for it.

68 The National Association of Secretaries of State, a bipartisan organization, has
69 twice voted in favor of a resolution calling for abolition of the commission.

70 So, we have a situation where we are saying we are the government, we are
71 here to give you help that you do not want. The tasks of the commission have now
72 either been completed or can be performed by more appropriate entities.

73 The commission did its job. We should thank the commission and the staff for
74 their service. But if the completion of their appointed task is not enough of a reason to
75 close it down, the commission also appears to have serious management problems.

76 Though its mission has dwindled, its staff has grown. The commission had 20
77 staff in 2004. Last year it had 64 staff. The average salary of the staff, according to
78 Congressman Greg Harper, is over \$100,000. Why is more staff needed, Mr. Chairman,
79 for less work?

80 This year's budget submission for the commission proposes spending \$5.4
81 million to manage \$3.4 million worth of programs. Now, does this make any sense?
82 When the cost of the overhead and staff salaries exceeds the amount of a program,
83 clearly something is wrong.

84 Finally, the commission has an unfortunate history of hiring discrimination. The
85 office of special counsel found that they engaged in illegal discrimination when, during a

86 search for a general counsel, an employment offer was made and then withdrawn when
87 the Democratic commissioners discovered the applicant was a Republican.

88 The result was a substantial settlement being awarded to the applicant, forcing
89 taxpayers to bear the cost. It has been reported that in subsequent interviews a
90 similar thing has happened within appropriate questions about military service.

91 Mr. Chairman, I recognize the nominees before us are not to blame for this
92 incident but that is beside the point. Even if we were to assume that the nominees
93 could right the ship and correct the problems, the question would remain where would
94 the ships sail and why make the trip?

95 Do we even need the commission? With its main job completed and with a big
96 budget problem in Washington, why could not its remaining duties be better performed
97 somewhere else?

98 Can a government program once created ever be terminated? Mr. Chairman,
99 Ronald Reagan once said, "A government bureau is the nearest thing to eternal life we
100 will ever see on this earth."

101 Should we not try, using this opportunity, to prove President Reagan wrong?

102 Thank you, Mr. Chairman.

103 **Chairman Schumer.** Thank you, Mr. Ranking Member. That is sort of a
104 different issue than moving nominees, whether the commission should continue.

105 I appreciate your views, and we will continue the discussion on that. I have
106 heard carefully what you said. We should not gainsay that the commission has done
107 some good things - testing voting equipment, dealing with butterfly ballots which
108 created all the kinds of problems, and establishing the military heroes grants which help

109 injured combat veterans vote.

110 But it is an issue that we will discuss. I understand your strong feelings and I
111 understand the need to cut back and I understand the need for having the kinds of
112 functions the commission does be done somewhere. The commission has done a good
113 job.

114 But with that, we both believe, even though we may not agree on the
115 commission, we both believe that nominees should move quickly. And so we will
116 move forward with our nominees if that is okay with the other members here.

117 **Senator Cochran.** Mr. Chairman.

118 **OPENING STATEMENT OF SENATOR COCHRAN**

119 **Chairman Schumer.** Senator Cochran.

120 **Senator Cochran.** I would like to join my colleague from Tennessee and
121 express my concerns that we are walking into an area where there is some uncertainty.
122 And in fairness to the nominees who are before the Committee for confirmation, I hope
123 we can resolve this issue.

124 I notice one of the Congressional members from my State has joined in
125 introducing legislation in the other body that would eliminate the commission, and I
126 noticed that it is expected that if we did, we would save about \$33 million in taxpayer
127 funds.

128 And the question is a legitimate question that I think the distinguished Senator
129 from Tennessee has raised.

130 **Chairman Schumer.** It is a legitimate question and we will figure out a forum to
131 deal with that question.

132 **Senator Cochran.** With that assurance, I will shut up and let you do what you
133 want to do.

134 **Chairman Schumer.** Senator Blunt.

135 **OPENING STATEMENT OF SENATOR BLUNT**

136 **Senator Blunt.** Mr. Chairman, I heard your last statement and I was just going
137 to ask if that was our intention, but I would like to look at this as well.

138 When I was the Secretary of State of Missouri, I was the chief election official of
139 the state for eight years. In 2010, I know many of the Secretaries of State called for
140 the elimination of the Election Assistance Commission agency and the President has not
141 requested any grant funds to be distributed which was one of the early and maybe most
142 successful purposes of the agency.

143 I join my colleagues in looking forward to your decision to call a hearing to talk
144 about the future of this agency. This request implies nothing about the quality of the
145 nominees, but just the purpose of the agency.

146 **Chairman Schumer.** I did not agree to have a hearing. I just said we would
147 continue our discussions. We will.

148 **Senator Blunt.** Well, I was optimistic in the way I heard you say that.

149 **Chairman Schumer.** I did not say we would not. I did not say we would.

150 **Senator Blunt.** I tend to be optimistic anyway, Mr. Chairman. That is why I

151 think we are going to get things done.

152 **Chairman Schumer.** Okay. Thank you. And you are a fine member of this
153 Committee and I appreciate your optimism. Okay.

154 Let me introduce the three witnesses here. We have three nominees. Our
155 current commissioner, Gineen Bresso, was recommended by Speaker Boehner and has
156 been an EAC commissioner since 2008. Thank you for your service, and I am sure my
157 colleagues join me in that. The comments about the need for the commission is no
158 reflection on the job that you have done.

159 Tom Hicks is recommended by Leader Pelosi, and he has served as Senior
160 Elections Counsel for the House Administration Committee. Myrna Perez,
161 recommended by Majority Leader Reid, has an impressive legal career with degrees
162 from Yale, Harvard, and Columbia. In her current job she is a counsel at the Brennan
163 Center for Justice.

164 So, we are going to swear the nominees in. Please stand. I ask the nominees
165 to raise their right hand. Do you swear that the testimony you are about to provide is
166 the truth, the whole truth, and nothing but the truth, so help you God?

167 **Ms. Bresso.** I do.

168 **Mr. Hicks.** I do.

169 **Ms. Perez.** I do.

170 **Chairman Schumer.** Thank you. Please be seated.

171 Now, your statements are going to be put in the record. They are available to

172 members.

173 Because we want to expedite these hearings, I am going to take the liberty, with
174 the permission of my colleagues here, to go right ahead to questions, if that is okay with
175 you, Mr. Chairman, Mr. Ranking Member. He is almost the chair. We work in such a
176 bipartisan way that I did not want to call him the chairman--

177 **Senator Alexander.** I just hope to be the Chairman.

178 **Chairman Schumer.** So, with that, let me ask two questions to each of you and
179 then we will go to my colleagues.

180 I am interested in learning what you each want to focus on as commissioner of
181 the Election Assistance Commission, number one.

182 And second, there has been some criticism of the EAC in recent years regarding
183 management and personnel issues. What measures would you take to improve the
184 administration of the agency?

185 First, Ms. Bresso, then Mr. Hicks, and then Ms. Perez. Then we will call on my
186 colleagues.

187 **TESTIMONY OF GINEEN BRESSO, NOMINATED TO BE A MEMBER OF THE ELECTION**
188 **ASSISTANCE COMMISSION**

189 **Ms. Bresso.** Thank you, Chairman Schumer.

190 Certainly all of the HAVA mandates that the commission has to fulfill are
191 important, but I believe what I would like to focus on certainly is the testing and
192 certification of our voting systems.

193 We do have systems that are in the field; and through our quality monitoring
194 program, we are going to have to observe and see how they do perform.

195 When I was chair, during my tenure, we did not have any systems that were
196 certified prior to my coming to the EAC. But during that time, I worked with my
197 colleagues and we had certified four systems; and since then, we have certified an
198 additional two systems and also two modifications.

199 So, I believe that is very important for the upcoming election cycle.

200 [The prepared statement of Ms. Bresso is included in the record:]

201 **Chairman Schumer.** Mr. Hicks.

202 **TESTIMONY OF THOMAS HICKS, NOMINATED TO BE A MEMBER OF THE ELECTION**

203 **ASSISTANCE COMMISSION**

204 **Mr. Hicks.** Thank you, Chairman Schumer.

205 I think that there are a couple of things that the commission can still focus on.

206 One being its clearing house function. Elections, as you know, happen every two
207 years, and those elections might have problems in them. That is not to say that the
208 commission should be abolished.

209 I believe that the commission can still function very well in terms of getting
210 information out to the state and local officials who are very adamant in their decision to
211 keep the agency alive.

212 The NASS decision was not necessarily unanimous. There were secretaries of
213 states, particularly Mark Ritchie from Minnesota, who voiced his opinion of the
214 commission being still available.

215 The testing labs, I believe, function very well and I believe that the functions of
216 that program should remain with the EAC.

217 Mr. Harper's bill would transfer most of these functions over to the FEC, I think,
218 should not be passed. I should also express that these are my opinions and not of my
219 bosses who currently employ me.

220 The bill itself would move particular items over to the FEC. The FEC has been
221 viewed by many as an agency that is deadlocked on the simplest of things. Some say
222 that sometimes they cannot even agree on what day of the week it is.

223 So, I do not believe that the EAC should be abolished. I think that it can still
224 function really well. I think that the state and locals have voiced their opinion. I think
225 that the civil rights groups have voiced their opinion, and I believe that the
226 administration of elections which is different than the financing of elections which the
227 FEC holds, makes these two agencies completely different and, therefore, they should
228 remain different.

229 [The prepared statement of Mr. Hicks is included in the record:]

230 **Chairman Schumer.** Thank you, Mr. Hicks.

231 Finally, Ms. Perez.

232 **TESTIMONY OF MYRNA PEREZ, NOMINATED TO BE A MEMBER OF THE ELECTION**

233 **ASSISTANCE COMMISSION**

234 **Ms. Perez.** Thank you, Senator.

235 At this time, I would not feel comfortable committing to a firm list of priorities
236 without talking to election administrators and seeing what it is that they need. But I
237 think my focus would be on three things.

238 One is growing confidence in the agency. It is very, very important that
239 election administrators, Congress, and the public feel like they are getting expert service
240 from the EAC, and that Congress and the public feel like taxpayers dollars are being well

241 spent.

242 I would also like to focus on making sure that the voting system standards were
243 the gold standard for voting system certification, and I think this is one area where it is
244 possible for there to be economies of scale.

245 It should not be the case that every state has to expend what could be
246 prohibitive resources just to make sure that our voting systems are safe and reliable;
247 and by having one agency that can collect all of the information and be accessible to all
248 of the vendors so they know what sort of benchmarks they have to hit, I think will
249 produce efficiencies of scale and economies of scale.

250 The last thing I think I would like to focus on is that of making sure that the
251 Agency is ahead of the cutting edge technical and legal issues that are facing election
252 administrators today.

253 Election administration is dynamic. The technology is changing at a rapid pace
254 and the laws are changing at a rapid pace. And election administrators have to do a
255 great deal of work under very challenging situations including resource challenges.

256 And if the agency is operating well and can predict what those issues are and
257 figure out an effective way to disseminate and collect that information, I think that the
258 comprehensiveness of its scope and the fact that it has a nationwide mission will allow it
259 to be beneficial to the election administrators.

260 I would like to note in my final moments that I find it deeply disturbing that NASS
261 has lost its confidence in the EAC, and if I am confirmed, I will talk to them. I will try to

262 figure out where the disconnect is and try to make sure that the EAC provides them the
263 best customer service available.

264 [The prepared statement of Ms. Perez is included in the record:]

265 **Chairman Schumer.** I thank all three of you for your good and succinct
266 answers. We are going to try to finish by 10:30. So, I would ask my colleagues for
267 brevity. We can have statements submitted into the record, of course, and other
268 questions for the nominees. We will have ample questions.

269 But I want to call on my friend and colleague, Senator Alexander.

270 **Senator Alexander.** Thanks, Mr. Chairman. I would just ask one question. I
271 would observe, I think these nominees are very well qualified, and you and I have just
272 completed an extensive review of all the positions that the Senate advises and confirms
273 and I think we ought to find a commission upon which they could serve where they have
274 something to do.

275 So, none of what I am saying has any reflection upon the three of them. I think
276 they are exceptionally talented people.

277 My question is for each of you. Our election system leaves responsibility for
278 running elections in the hands of state and local officials. The Help America Vote Act
279 provided some federal assistance, some minimal federal requirements; but it basically
280 left the system of elections in state and local hands.

281 Do you see that as a good or bad thing? Do you think the elections would
282 benefit from more federal control? Do you think the EAC would be more effective if it

283 had more power?

284 **Chairman Schumer.** Ms. Bresso.

285 **Ms. Bresso.** Certainly. I agree that the elections should be administered on
286 the state level as you had articulated; and certainly, you know, just traveling around and
287 talking to election officials, each state is different, each locality is different. There is
288 not a "one size fits all" approach. So to the extent that EAC can provide assistance to
289 states and localities with the administration of elections, I believe that would be most
290 beneficial.

291 **Chairman Schumer.** Thank you for your good and succinct answer.

292 Mr. Hicks

293 **Mr. Hicks.** The Help America Vote Act was crafted in a bipartisan manner back
294 in 2001 and 2002. There was a lot of blood, sweat, and tears that came up with that
295 piece of legislation. If Congress should decide that it should be change is when I will
296 change with it.

297 **Chairman Schumer.** Thank you, Mr. Hicks.

298 Ms. Perez.

299 **Ms. Perez.** Our Constitution sets forth a very important and protected role for
300 the states in the administration of elections, and I very much believe that states have a
301 very important role to play. I think that state and local election administrators need
302 resources, they need assistance, they need information being sent to them, and
303 Congress made a determination that a federal agency could do that through a number

304 of very delineated but very important statutory functions.

305 I think that we as voters are best served if the Election Administration
306 Commission focuses on the nuts and bolts of election administration and focuses on the
307 core activities that Congress set forth for the Agency in the Help America Vote Act.

308 **Chairman Schumer.** Thank you, Senator Alexander.

309 Senator Cochran.

310 **Senator Cochran.** Mr. Chairman, let me ask Ms. Bresso.

311 You have previously expressed some concerns about the budget submitted by
312 the EAC. What role do you see the commissioners playing in the formation of a budget
313 submission and what, if any, changes would you recommend be reviewed by the
314 Committee during that process?

315 **Ms. Bresso.** Currently, the commissioners play a role in the budgets but it is
316 more at the last part of the budget process.

317 Under our roles and responsibilities document that was adopted through a
318 consensus vote prior to my tenure, the commission had delegated the authority to the
319 executive director to develop the agency's financial plan.

320 And certainly as commissioners, being appointed to the commission and having
321 accountability to the taxpayers and Congress, we need to play a much more active role,
322 and I want to work with my colleagues here to make sure that we do that moving
323 forward.

324 **Senator Cochran.** Thank you very much.

325 Thank you, Mr. Chairman.

326 **Chairman Schumer.** Thank you. Now, since we have a few extra minutes
327 because of everyone's brevity, do any of the witnesses want to say anything else that
328 you did not get a chance to add? Do not feel obligated but take the opportunity.

329 **Mr. Hicks.** Thank you, Chairman Schumer.

330 I would just like to acknowledge the presence of my mother--

331 **Chairman Schumer.** Isn't that nice.

332 **Mr. Hicks.** --who flew down from Boston to be here today.

333 **Chairman Schumer.** Would she please stand so we can acknowledge her as
334 well. Hi. I am sure you are proud of your son, Ms. Hicks.

335 [Applause.]

336 **Mr. Hicks.** The only other thing that I would like to add is that my children
337 were not able to make it here today. They will be watching this via the webcast so I
338 just wanted to acknowledge the three of them.

339 Elizabeth, who is seven. Megan, who is four, and Edward, who is two. Thank
340 you.

341 **Chairman Schumer.** Well, God bless them, and I am sure they are proud of
342 their dad as we all are.

343 Ms. Perez.

344 **Ms. Perez.** If I may do the same. My husband Mark Muntzel, members of my
345 family, members of my church family, longtime friends, classmates, colleagues are here

346 today to provide their love and support. I am truly blessed.

347 **Chairman Schumer.** Great. Thank you. Would they like to, would at least
348 your husband and immediate family like to stand so we can acknowledge them and
349 thank them.

350 Thank you both for being here.

351 That was nice. Again I want to repeat what Lamar Alexander said. You are all
352 three very well qualified. There is discussion as to whether the EAC should continue as
353 you have heard, and that is a discussion we will continue. I promise that to Senator
354 Alexander, but that issue is not a reflection on the quality of either your service, Ms.
355 Bresso, or your nominations, Mr. Hicks and Ms. Perez. You are outstanding people and
356 I am glad you are looking to work in our government.

357 So, let me thank the nominees for testifying this morning.

358 The record will remain open for five business days for additional questions and
359 statements.

360 The hearing is adjourned.

361 [Whereupon, at 10:29 a.m., the Committee adjourned.]